

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7377 of 1989

WITH

SPECIAL CIVIL APPLICATION No 7378 of 1989

AND

SPECIAL CIVIL APPLICATION No 7379 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAXMAN A HARWARIYA

Versus

KERALA STATE COIR COPRN LTD

Appearance:

MR YS VYAS for Petitioner

MR AMAR BHATT for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/03/97

ORAL JUDGEMENT

1. As in all these three Special Civil Applications, the facts and grounds of challenge are common, they are being disposed of by this common order.

2. The petitioners were appointed as

Peon-cum-Stitcher in the respondent-Corporation on 1st May, 1983, March, 1980 and 1st September, 1981 respectively. Under the orders dated 19th November, 1986, the services of all the three petitioners were confirmed with effect from 14th November, 1986. The petitioners pray for direction to the respondent-Corporation to fix their pay in the pay-scale of the post of peon with all other consequential benefits. The petitioners were appointed on daily wages and still they continue on daily wages, though subsequently from November, 1986, they have been paid the consolidated salary of Rs.519/-. The claim of the petitioners is based on the ground that the counterpart of the petitioners in the Head Office of the Corporation and its other branches are getting the salary in the pay-scale of 110-195 with all other allowances.

3. The reply to the Special Civil Application has been filed and the claim of the petitioners has been contested on the ground that the employees of other branches of the Corporation and the Head Office are not doing the identical or similar work as compared to the petitioners' work. It has further been stated that in the Head Office no person is holding the post of peon-cum-stitcher. The functions and duties of the peon are different from the functions and duties of the peon-cum-stitcher, and as such, no parity can be claimed. The petitioners are being paid the minimum wages fixed for this class of employment and in all other States, the persons appointed as peon-cum-stitcher are being paid wages equivalent to minimum wages as prescribed under the State law. It has further been stated that merely because the minimum wages fixed by different State laws may be different, it cannot be suggested that there is a discrimination. In support of this contention, the counsel for the respondent placed reliance on the decision of the Hon'ble Supreme Court in the case of State of H.P. & Anr. vs. Pran Nath Anand & Anr. reported in 1993 SCC (L&S) 843.

4. The learned counsel for the petitioners contended that all the petitioners have been confirmed as peon-cum-stitcher, and as such, they are entitled for the pay in the pay-scale which is fixed for the peons. All the peons irrespective of the fact whether they are posted at Head Office of the Corporation or other branches of the Corporation at different States are being paid the pay-scale of 110-195. The counsel for the petitioners further contended that this claim of the petitioners is clearly borne out from Article 14 read with Article 39(d) of the Constitution of India.

5. On the other hand, the counsel for the respondent contended that the duties and functions which are being discharged by the peons at the Head Office and other branches of the Corporation are different, and as such, no parity can be claimed. It has next been contended that in all the other branches of the Corporation in other States, the persons who are working on the post of peon-cum-stitcher are being paid the minimum wages as prescribed by the State concerned. Different States may prescribe different wages for the employees of one category.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In the case of State of H.P. & Anr. vs. Pran Nath Anand & Anr. (supra), the Apex Court has held that a State Government can have separate pay scales for its employees irrespective of the fact that a different scale of pay exists in any other State for similar posts. Normally for similar posts there should be uniformity in the pay scale but there being difference in the economic condition in different States, it cannot be held that it is not permissible to have different scales and conditions of service for employees of the different States. But that decision is of little help to the counsel for the respondent.

7. It is not in dispute that the respondent-Corporation is a Government of Kerala Undertaking, and it has branches throughout the country in various States. The counsel for the respondent does not dispute that the Officers at the branch of the Corporation in the State of Gujarat are being paid the pay scale which has been prescribed by State of Kerala for the Officer of that category. So it is not the case of two different States, but the respondent-Corporation is owned by the Government of Kerala though having its branch office in the State of Gujarat. The pay scale prescribed for the post by the Corporation has to be given to the employee of the said category who is posted at the branch of the Corporation in the State of Gujarat.

8. But the question which arises for consideration is whether the petitioners are entitled for the pay-scale of the post of peon. The respondent-Corporation justified its action not to give the pay in the pay scale of the peon to the petitioners on the ground that at the Head Office of the Corporation, the post of peon-cum-stitcher is not there. The Corporation has not produced any material on record of these petitions to

show that at other branches of Corporation in other States, the peon-cum-stitchers are being paid the minimum wages prescribed by the State concerned. Even if we presume that in other States, the Corporation is paying to the peon-cum-stitchers at its branches, the minimum wages prescribed by the State concerned, the claim of the petitioners cannot be denied on this ground. If we go by the nomenclature, that is peon and peon-cum-stitcher, there appears to be some difference in the two posts. It is not in dispute that the post of peon is a Class IV post and the Class IV posts are given the lowest pay scale in the States. The petitioners were made permanent and at the Corporation branches in different States the functions and duties of work may be different than the peon at the Head Office, but in the absence of the case of the respondent that there is another category lower than the peons, the claim of the petitioners for the lowest pay scale in the Corporation, deserves acceptance. At the branch of the Corporation in the State of Gujarat where the coir products are being sold, the petitioners would be doing the work of stitching also, but they are the Class IV employees which is the lowest category, and after they have been made permanent, I fail to see any justification in the action of the respondent-Corporation to continue giving them the minimum of the wages. So long the petitioners were continued as daily wagers, it is understandable to give them the minimum of the wages as prescribed by the State of Kerala or may be by the State of Gujarat, but when they have been confirmed in the Corporation services then paying them the consolidated salary, though there is a specific pay scale for the Class IV employees, is arbitrary and unjustified. The petitioners are in the service of the Corporation since 1983 and these petitions have been filed by them in the year 1989 i.e. after six years of their services in the Corporation and now we are in the year 1997. So for all these years they have been continued in the fixed salary i.e. minimum wages which certainly is an unfair labour practice or an exploitation of the youth in a country where there is wholesome unemployment. I fail to see any justification in the action of the respondent not to extend the benefit of the pay scale of Class IV to the petitioners who are in the services of the Kerala State Undertaking.

9. In the result, these Special Civil Applications succeed and the same are allowed. The respondent-Corporation is directed to give the pay to the petitioners with all other allowances admissible as per rules in the pay-scale of 110-195 with effect from the date of filing of these Special Civil Applications i.e.

19th October, 1989 taking round figure of 1st November, 1989. However, if in the meanwhile the pay-scale of 110-195 has undergone any revision or revisions, then the petitioners shall be entitled for the revised pay scale with all other consequential benefits. The respondent-Corporation is further directed to calculate the arrears to be paid to the petitioners for all these years within a period of three months from the date of receipt of certified copy of this order. The respondent-Corporation shall pay the amount of arrears on fixation of the pay of the petitioners in the pay scale aforesaid within a period of three months next thereafter. It is a case where the low paid employees have unnecessarily been dragged into litigation, which heavily costs. These poor persons have to be compensated for the expenses which they incurred in litigation. The respondent-Corporation is directed to pay to each of the petitioners Rs.2000/- by way of costs of these Special Civil Applications. Rule is made absolute in all these Special Civil Applications.

zgs/-